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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/075,581 | 02/14/2002 | Walter Birnecker | WCL-8069 | 9941 |
| 24131 | 7590 | 01/24/2006 | EXAMINER | |
| LERNER GREENBERG STEMER LLP | | | JASTRZAB, KRISANNE MARIE | |
| P O BOX 2480 | | | ART UNIT | |
| HOLLYWOOD, FL 33022-2480 | | | PAPER NUMBER | |

1744

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,581

Applicant(s)

BIRNECKER, WALTER

Examiner

Krisanne Jastrzab

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 6-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larose et al., U.S. patent No. 5,868,998 in view of Connors et al., U.S. patent No. 6,086,833.

Larose et al., teach microaerosol fumigation of a closed environment for decontamination of that closed environment. An antimicrobial solution is dispersed into the environment via a carrier gas and a venturi nozzle which acts to create particles of the solution in the range of 1 to 100 microns. Larose et al., further teach the use of a hydrogen peroxide solution, however, clearly disclose choosing any agent recognized for safe use with limited tissue destruction associated therewith. See column 2, lines 48-68, column 3, lines 5-15, and column 4, lines 3-27.

Conner et al., teaches the application of a venture nozzle for delivery of a disinfecting agent disclosing that the venture jet used a high velocity jet of carrier gas, preferably air, that jet having a higher pressure than the pressure of the delivered agent to be mixed therewith. The venture produces a highly homogenized mixture of agent and carrier. See column 3, lines 56, through column 4, lines 11.

It would have been well within the purview of one of ordinary skill in the art to utilize a venture jet nozzle as disclosed in Conner et al., for the microaerosolizing means of Larose et al., because Larose et al., clearly teach the efficacy of venture devices while remaining silent as to their structure, and Conner et al., teach achieving a highly homogenized mixture for delivery to the area requiring sanitizing.

With respect to claims 7-8, Conner et al., teaches pressures within the claimed range.

With respect to claim 9, Larose et al., teach application of the method within a closed, transportation truck, and in a hatchery, both of which would intrinsically be at least 1 cubic meter in volume.

With respect to claim 12, flushing an enclosure following a decontaminating treatment is well recognized in the art and would have been well within the purview of one of ordinary skill in the art in order to ensure removal of any residual agent.

Claims 5, 14-15 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larose et al., together with Conner et al., as applied to claims 1-4, 6-13 and 16 above, and further in view of Hool et al., U.S. patent No. 3,982,022.

Hool et al., teaches the use of antimicrobial solution for sanitizing applications, including spraying enclosed areas, wherein the agent includes phenylethanol, potassium hydroxide and water. The solutions of Hool et al., are taught as having a low toxicity to warm blooded animals and employing viscosity-raising agents as well as surface active agents including propanol. See column 3, lines 15-25, column 5 line 43 through column 6, line 25 and column 7, lines 1-18.

It would have been obvious to one of ordinary skill in the art to employ the active solutions of Hool et al., in the method of Larose et al., because they have low toxicity to warm blooded animals while being effective in sanitizing.

With respect to claims 14-15, Hool et al., teaches the concern with viscosity and surface tension which intrinsically affect the contacting activity of the agent, as well as those agents claimed by Applicant, and thus would intrinsically meet the viscosity and surface tension parameters claimed.

Response to Arguments

Applicant's arguments filed 11/3/2005 have been fully considered but they are not persuasive.

Applicant argues that the prior art of record fails to reach the claimed invention because Connors does not teach a system compatible with liquid agents and therefore does not provide an homogenous mix of carrier gas and liquid agent, however, the Examiner would disagree and point out that Connors clearly teaches the provision of liquid, namely water in the system as it teaches 100 % humidification of the ozone gas

and further teaches the provision of a "liquid lumen" where water is drawn into the system. See column 15, lines 40-60 and column 16, lines 20-40.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Krisanne Jastrzab
Primary Examiner
Art Unit 1744

January 23, 2006